

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



February 6, 1991

ALL COUNTY LETTER NO. 91-14

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: CHANGE IN THE TREATMENT OF STATE DISABILITY
INSURANCE PAYMENTS IN THE AFDC PROGRAM

REFERENCE: MPP 44-111.2 AND 44-113.2


This letter is to instruct County Welfare Departments (CWDs) to begin treating State Disability Insurance (SDI) payments as earned income eligible for the disregards specified in 44-111.2 and 44-113.2. By the payment month of April 1991, County Welfare Departments shall have implemented changes to the treatment of SDI payments to allow earned income disregards. The State Department of Social Services (SDSS) is changing its current policy as a result of a Federal Ninth Circuit Court of Appeal decision (Figueroa v. Sunn NO.87-2572). The Court ruled that Hawaii's Temporary Disability Insurance (TDI) benefits are to be treated as earned income eligible for the earned income disregards available in the AFDC program. The Hawaiian Court decision directly impacts California because California is in the region under the Ninth Circuit Court of Appeal's jurisdiction. SDSS has determined that the purpose and operation of California's SDI program parallels Hawaii's TDI program to the extent that SDI payments must also be accorded earned income status.

On June 8, 1990, a lawsuit (Sallis v. McMahon) was filed in State Court to force California to comply with the Federal Court's decision in Figueroa and to secure retroactive benefits for class members. On January 11, 1991, the Superior Court for the County of Sacramento approved the attached Consent Decree.

As a result of the Figueroa decision, the Federal Department of Health and Human Services has allowed California to treat SDI as earned income and claim Federal Financial Participation for payments made to assistance units receiving earned income disregards for SDI payments.

Instructions on the implementation of the retroactive portion will follow in approximately six months. Notices of Action message language to implement the changes to the prospective treatment of SDI income will follow under a separate cover approximately March 1, 1991. Translations in the five standard languages will also follow.

If you have any questions on this change of policy on the treatment of SDI payments, please call Ms. Sandra Poole-Taylor at (916) 324-2661. If you have any questions on the upcoming retroactive portion of the lawsuit, please call Mr. Vincent Toolan at (916) 324-2007.



ROBERT A. HOREL
Deputy Director

cc: CWDA

Attachment

ORIGINAL



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17 Attorneys for Plaintiffs
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19 Jessica Sallis

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25 Attorney for Plaintiff Marquez

26 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
27 FOR THE COUNTY OF SACRAMENTO

28 MELINDA SALLIS, JESSICA SALLIS,
29 GREGORY BROWN and EVANGELINA
30 MARQUEZ, on behalf of themselves
31 and all others similarly
32 situated,

33 Petitioners and Plaintiffs,

34 vs.

35 LINDA McMAHON, Director,
36 California State Department of
37 Social Services, STATE OF
38 CALIFORNIA DEPARTMENT OF SOCIAL
39 SERVICES, AND DOES I - VI,

40 Respondents and Defendants.

FILED

JAN 30 1991

By W. Baldy
DEPUTY

) CASE NO. 364308
)
) CLASS ACTION
)
) STIPULATION OF
) SETTLEMENT AND CONSENT
) DECREE PURSUANT THERETO

1 THE PARTIES HEREIN, BY AND THROUGH THEIR ATTORNEYS OF
2 RECORD, DO HEREBY STIPULATE AS FOLLOWS:

3 1. In this action, plaintiffs challenge the
4 defendants' treatment of State Disability Income (SDI) benefits
5 as unearned income for purposes of the Aid to Families With
6 Dependent Children (AFDC) program. By treating SDI as unearned
7 rather than as earned income, defendants have failed to grant
8 plaintiffs certain income disregards and exclusions which are
9 afforded earned income under the AFDC program.

10 2. Plaintiffs sought mandamus relief to reverse
11 DSS' administrative decision in their cases and to change
12 defendants' policy. Plaintiffs further sought declaratory and
13 injunctive relief to secure rights guaranteed by the Social
14 Security Act, 42 U.S.C. Section 602 et seq. and the United
15 States and California Constitutions. Petitioners also bring
16 this action to seek retroactive benefits for themselves and
17 other similarly situated persons injured by defendants' policy.

18 3. Having previously settled the individual claims
19 set out in the fourth cause of action through a stipulated writ
20 of mandate pursuant to C.C.P. Section 1094.5 plaintiffs and
21 defendants agree to settle the remaining causes of action as
22 set forth herein.

23 Class Certification

24 4. For purposes of this consent decree, a class is
25 certified consisting of all former, current and future
26 recipients of AFDC benefits in California who received State
27 Disability Insurance benefits under Unemployment Insurance Code

1 Section 100 et seq. while on AFDC and whose SDI benefits were
2 treated as unearned income and who therefore were denied earned
3 income disregards, exclusions and exemptions as a result of
4 that policy.

5 5. This is a proper class action under Code of
6 Civil Procedure Section 382. The class is definite and
7 ascertainable in that the members thereof can be identified
8 from records in the control of defendants. The members of the
9 class are so numerous that joinder of all class members is
10 impracticable. There is a well defined community of interest
11 in that there are substantial questions of law or fact common
12 to plaintiffs and members of the class. The claim of plaintiffs
13 are typical and substantially identical to the claims of the
14 class as a whole. Plaintiffs, as representative parties, will
15 fairly and adequately protect the interests of the class.

16 6. Defendants have acted or refused to act on
17 grounds generally applicable to the class, thereby making
18 appropriate final relief so as to make members of the class
19 whole. By granting class relief, multiple lawsuits will be
20 avoided.

21 Binding Effect of Consent Decree

22 7. This consent decree shall be binding upon all
23 class members and the Director of DSS, and her agents,
24 employees, successors in interest and the counties, county
25 welfare departments, and their employees and agents.
26

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PROSPECTIVE RELIEF

8. To the extent permitted by Federal law and reimbursable by federal financial participation, beginning with the April, 1991 payment month, the defendants agree to treat SDI paid pursuant to Unemployment Insurance Code Section 100 et seq. as earned income for purposes of AFDC.

9. The defendants agree to issue an All County Letter (ACL) notifying counties of this new policy within 60 days of the entry of this Stipulation.

10. Within 24 months of the entry of this Stipulation, defendants further agree to take all action necessary to adopt regulations which state that SDI and sick pay shall be treated as earned income.

11. Defendants agree to submit to plaintiffs' attorneys for their review and comment the language of the ACL.

Defendant shall transmit the language of the ACL to plaintiffs' counsel for review and comment as soon as administratively possible. Plaintiffs shall return their comments within 15 working days from the receipt of the language. In the event that plaintiffs' counsel objects to the ACL language, the parties shall attempt to resolve their disagreement and meet and confer as necessary. If they are unable to do so, plaintiffs may seek further relief from the court upon five days notice to defendants. In that event, defendants shall not finalize the ACL pending judicial review. If plaintiffs petition the Court for further relief, the timeframes anticipated by this consent decree will be

1 suspended. The suspense period may exceed the period of time
2 necessary for the Court to resolve what further relief, if any,
3 the plaintiffs shall receive.

4 RETROACTIVE RELIEF

5 12. Defendants agree to recalculate AFDC grants and
6 issue any underpayments, which resulted from treating SDI as
7 unearned income, to any individual who received AFDC and SDI
8 from June 1, 1987 forward, by using the procedures set forth
9 below.

10 NOTICES OF ACTION

11 13. A Notice of Action (NOA) will also be sent
12 explaining the calculation of the amount and purpose of the
13 check, or in the case of a denial of an underpayment, the
14 reason for the denial.

15 Individuals Currently On AFDC Identified Through The PVS
Computer Match Tape

16 14. Defendants have in their possession and will
17 preserve a computer run (tape) prepared as part of the PVS
18 program which contains the names of every individual who
19 received AFDC and SDI concurrently from August 1989 to present.
20 Defendants agree to provide these names to the county welfare
21 departments (CWD).

22 15. For those on AFDC the CWD shall recalculate the
23 assistance unit's underpayment by applying the appropriate
24 earned income disregards. The counties shall within 20 days,
25 mail the underpayment check to the assistance unit's current
26 address.

1 16. Defendants agree to submit the NOA's to
2 plaintiffs' attorneys for their review and comment and meet and
3 confer as necessary, the language of the NOA(s). The NOA(s)
4 shall be simple to read and understand and will subsequently be
5 submitted to the Turner review committee. The NOA(s) shall
6 generally contain the following:

7 a. A brief explanation of how the amount of the
8 underpayment was reached and the purpose of the check.

9 b. In the case of a denial, how and why the
10 underpayment was denied. If an underpayment is denied
11 because of a late CA-7, the assistance unit shall be
12 advised that they can request a good cause exemption for
the late CA-7.

13 c. A brief statement that the underpayment will not
14 count against their AFDC or count as income in the Food
15 Stamp program to the extent permitted by federal law.

16 d. A brief statement that if the assistance unit
17 believes it did not receive all disregards or work
18 expenses to which it is entitled; it should contact the
19 CWD or request a hearing.

20 Individuals Currently on PVS and Not on AFDC

21 17. Defendants agree to send an informing claim form
22 to the last known address notifying individuals that welfare
23 may own them money. (See paragraph 25 for contents of
24 informing claim form)

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26 //

Individuals Who Received SDI and AFDC Between June 1, 1987 and August 1989 and are Unknown to Defendants

18. Posters. In order to identify individuals who were underpaid prior to the IEVS list, defendants agree to develop a poster and to distribute it as set forth below. The posters shall be in English and Spanish, shall contain substantially the same information as the informing claim form, and be in sufficient numbers to post in each CWD office. The CWD's shall be required to prominently display the posters during the claiming period beginning on a date specified by the defendant which shall be uniform throughout the state. There shall be a short statement on the informing claim form and the poster in four other languages (specified below) advising in substance: "The county may owe you money. You may contact or call your local welfare department for a translation of this notice."

19. Defendants shall provide posters to all county welfare departments and food stamp outlets. Up to 300 additional posters will be mailed to addresses for which address labels are provided by plaintiffs. The defendant shall provide posters to all locations specified at least 10 days in advance of the deadline for posting by the county welfare departments.

20. Each county in which the claimant was granted aid shall be responsible for granting or denying claims under this consent decree. The claimant may deposit the claim form with the local welfare department which shall forward the

1 claim, as soon as possible but no later than 30 days after
2 receipt, to the county indicated on the informing claim form.

3 Claim Period Time Lines For All Claimants

4 21. The defendant shall specify a uniform statewide
5 60 day claim period. The posters shall distinctly display the
6 date beyond which claims shall not be accepted.

7 22. Counties shall have 60 days to grant or deny the
8 claim from the date the completed claim is received by the
9 responsible county. The underpayment shall be mailed within 20
10 days after the claim has been granted. In cases in which the
11 informing claim form is too incomplete to process, the county
12 shall request the missing items in writing within 30 days of
13 receipt of the claim. The claimant shall have 30 days from
14 receipt of the county request to provide the additional
15 information. Whenever possible, the county shall complete the
16 claim and process payment without requiring the claimant to
17 come in person to the welfare office.

18 Informing Claim Forms

19 23. The Defendant will develop a uniform claim form
20 in conjunction with plaintiffs' attorneys.

21 24. Claim forms shall be available in English,
22 Spanish, Vietnamese, Laotian, Chinese and Cambodian. Telephone
23 assistance shall be available in each language specified above.

24 25. The claim forms shall generally contain the
25 following:

26 a. The purpose of claim form.

27 b. A statement that the assistance unit may be owed

1 money.

2 c. A statement that the money will not count
3 against their AFDC or count as income in the Food Stamp
4 program to the extent permitted by federal law.

5 d. Social Security number.

6 e. Case name(s) and numbers, if known

7 f. County or counties where AFDC was received, if
8 known.

9 g. Approximate dates of receipt of SDI and AFDC, if
10 known.

11 h. A statement that the informing claim form is
12 signed under the Penalty of Perjury.

13 Plaintiffs' Review of Documents to Implement Retroactive
14 Payments

15 26. The informing claim form, posters and notices of
16 action developed to implement the retroactive benefits portion
17 of this settlement shall transmitted to plaintiffs' counsel as
18 soon as administratively possible. Plaintiffs shall return
19 comments on the documents, within 15 working days from receipt
20 of such documents. In the event that plaintiffs' counsel
21 objects to any such document the parties shall attempt to
22 resolve their disagreement and will meet and confer as
23 necessary. If they are unable to do so, plaintiffs may seek
24 further relief from the Court upon five days notice to
25 defendants. In that event, defendants shall not finalize the
26 disputed document pending judicial review. If plaintiffs
27 petition the Court for further relief the timeframes

1 anticipated by this consent decree will be suspended. The
2 suspense period may exceed in duration the period of time
3 necessary for the Court to resolve what further relief, if any,
4 the plaintiffs shall receive. The parties agree that the
5 timely operation of the retroactive benefits claims process is
6 critical to full relief in this action.

7 Subsequent to this review, all claim forms and NOA's shall be
8 transmitted to the Turner review committee.

9 Retroactive Benefits Report

10 27. The defendant shall make one report concerning
11 the retroactive benefits.

12 28. The defendant shall report to the plaintiffs'
13 counsel within 180 days from the close of the claim period the
14 following:

- 15 a. Number of claims received by county.
- 16 b. Number of cases paid by county.
- 17 c. Number of claims denied by county.
- 18 d. Total amount of benefits paid.

19 Other Matters

20 29. No interest shall accrue on any corrective
21 underpayment paid pursuant to this Stipulation.


22 30. The Court shall retain jurisdiction for three
23 years to enforce or amend any provision of this Order and, if
24 necessary, to modify or clarify any of its provisions or
25 defendants' compliance with this settlement upon noticed motion
26 by counsel for either party.

27 31. This stipulation constitutes a full and complete


1 settlement of this litigation, entered into by all parties.
2 However, should the Federal government withdraw federal
3 financial participation, the parties agree the plaintiffs or
4 any other party has the right to litigate the issues addressed
5 in this action. The parties stipulate that judgment shall not
6 be entered in favor of either party in this action.

7 32. Attorneys' fees and costs, if any, sought by
8 plaintiffs will be the subject of separate negotiations, and
9 proceedings, if necessary. Dismissal of the action will not
10 prejudice any claim for fees, is such is made.


11
12 DATED: January 8, 1991
~~December 1, 1990~~


KATHERINE E. MEISS
Counsel for Plaintiffs Class and
Melinda and Jessica Sallis and
Gregory Brown

15
16 DATED: January 7, 1991
~~December 1, 1990~~

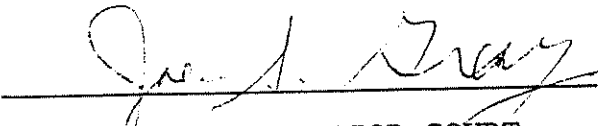

SUSANA SALGADO
Counsel for Plaintiff
Evangelina Marquez

18
19 DATED: January 9, 1991
~~December 1, 1990~~


FRANK FURTEK
Deputy Attorney General
Counsel for Linda McMahon,
Director, Department of Social
Services

23 IT IS SO ORDERED.

24 DATED: January 29, 1991
~~December 1, 1990~~


JUDGE OF THE SUPERIOR COURT
JOE S. GRAY

DECLARATION OF SERVICE OF MAIL

Case Name: Melinda Sallis et al. v. Linda McMahon et al.

Court No.: 364308

I declare:

I am employed in the County of Sacramento, California. I am 18 years of age or older and not a party to the within action; my business address is 1515 K Street, P. O. Box 944255, Sacramento, California 94244-2550.

On January 11, 1991, I served the attached

STIPULATION OF SETTLEMENT AND CONSENT DECREE
PURSUANT THERETO

in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as follows:

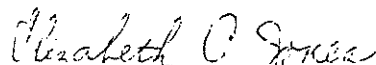
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190 Reamer Street
Auburn, CA 95603

I declare under penalty of perjury the foregoing is true and correct, and that this declaration was executed at Sacramento, California on January 11, 1991.



ELIZABETH C. JONES